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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

FABIAN FUENTES ROSAS,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:05-cv-00490-RLH-VPC

**ORDER**

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, by Fabian Fuentes Rosas, a prisoner represented by counsel. This matter comes before the Court on petitioner's motion to reopen the case and motion to file a second amended petition. (ECF No. 63).

On September 13, 2007, this Court ruled that the first amended petition was a mixed petition, as Grounds One, Four, Five, Six, Seven, and Nine were unexhausted, but Grounds Two, Three, Eight, and Ten were exhausted. (ECF No. 46). The Court gave petitioner the option of abandoning his unexhausted claims and proceeding on his exhausted claims, or in the alternative, to seek a stay under *Rhines v. Weber*, 544 U.S. 269 (2005). Petitioner moved for the issuance of stay and abeyance order under *Rhines v. Weber*. (ECF No. 56). By order filed September 16, 2008, this Court granted petitioner's motion for a stay and the case was administratively closed. (ECF No. 61).

Petitioner's further state-court proceedings having concluded, petitioner has now returned to

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2 this Court seeking to reopen this case. On April 17, 2013, petitioner filed a combined motion to  
3 reopen the case and motion for leave to file a second amended petition. (ECF No. 63). Petitioner  
4 also filed exhibits in support of the motion to reopen the case and in support of the first amended  
5 petition. (ECF Nos. 64 & 65). Respondents filed a response to the motion on May 6, 2013,  
6 indicating that they have no objection to Rosas' motion to reopen. (ECF No. 66, at p. 1).  
7 Respondents indicate that they do not consent to the filing of a second amended petition. (ECF No.  
8 66, at p. 2). In the interests of justice and pursuant to Rule 15(a)(2) of the Federal Rules of Civil  
9 Procedure, petitioner's motion to file a second amended petition is granted. The motion to reopen  
10 this action is granted.

11 **IT IS THEREFORE ORDERED** that petitioner's motion to reopen this action and motion  
12 for leave to file a second amended petition (ECF No. 63) is **GRANTED**.

13 **IT IS FURTHER ORDERED** that, as the stay is lifted by this order, the Clerk shall  
14 **REOPEN THE FILE** in this action.

15 **IT IS FURTHER ORDERED** that the supplemental exhibits, filed April 17, 2013, at ECF  
16 Nos. 64 & 65, are **ACCEPTED** as supplemental exhibits to the first amended petition (ECF No. 32).  
17 The Clerk of Court **SHALL ATTACH AND/OR LINK** the exhibits at ECF No. 64 & 65 to the first  
18 amended petition (ECF No. 32) on the CM/ECF docket in this action.

19 **IT IS FURTHER ORDERED** that petitioner shall have **ninety (90) days** from the date of  
20 entry of this order to **FILE AND SERVE** a second amended petition and any further exhibits. In  
21 granting petitioner 90 days, as was specifically requested, the Court is disinclined to grant further  
22 extensions of time beyond the 90 days; however, the Court will consider such a motion if  
23 extraordinary circumstances are present.

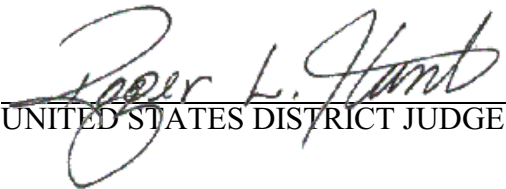
24 **IT IS FURTHER ORDERED** that respondents shall have **thirty (30) days** following  
25 service of the second amended petition to **FILE AND SERVE** an answer or other response to the  
26 same.

27 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** following service  
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2 of the answer to **FILE AND SERVE** a reply brief. If a dispositive motion is filed in response to the  
3 second amended petition, the parties shall brief the motion in accordance with Local Rule 7-2.

4 **IT IS FURTHER ORDERED** that the parties **SHALL SEND** courtesy (paper) copies of  
5 any further exhibits filed in this action to the **Reno** Division of this Court. Courtesy copies shall be  
6 mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of  
7 “Staff Attorney” on the outside of the mailing address label.

8 Dated this 7<sup>th</sup> day of May, 2013.

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11 UNITED STATES DISTRICT JUDGE  
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